UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DANIEL HARPER,
 	
      Plaintiff,
 	
  v.
 	
B. POWELL, et al.,
 	
      Defendants.
	Case No.: 1:24-cv-00456-KES-SKO
	
	ORDER VACATING FINDINGS AND RECOMMENDATIONS TO DENY PLAINTIFF'S APPLICATION TO PROCEED *IN FORMA PAUPERIS*
	
	ORDER TRANSFERRING CASE TO THE SACRAMENTO DIVISION OF THE EASTERN DISTRICT OF CALIFORNIA
	
	ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S REQUEST TO DISMISS (Doc. 8)

Plaintiff Daniel Harper is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

I.   INTRODUCTION

Plaintiff filed his complaint and an application to proceed in *forma pauperis* on April 17, 2024. (Docs. 1 & 2.)

On April 22, 2024, this Court issued its Findings and Recommendations to Deny Plaintiff's Application to Proceed *In Forma Pauperis.* The Court found that Plaintiff had filed prior lawsuits that were dismissed for a failure to state a claim, subjecting Plaintiff to the 28 U.S.C. § 1915(g) bar, and that he was not in imminent danger of serious physical injury. (Doc. 7.)

The Court recommended Plaintiff's application to proceed *in forma pauperis* be denied and that he be ordered to pay the $405 filing fee within 30 days. (*Id*. at 4.)

On May 6, 2024, Plaintiff filed an untitled document, docketed by the Clerk of the Court as a Request to Dismiss. (Doc. 8.) Plaintiff states his complaint should have been filed in Sacramento rather than Fresno during the e-filing process, and seeks to "get this case dismissed so [he] can file it" in Sacramento. (*Id*.)

II.   DISCUSSION

A review of Plaintiff's complaint indicates his claims arose at California State Prison-Sacramento, rather than at the institution where he is presently housed.[1] Thus, the alleged violations took place in Sacramento County, which is part of the Sacramento Division of the United States District Court for the Eastern District of California. Therefore, the complaint should have been filed in the Sacramento Division.

Pursuant to Local Rule 120(f), a civil action which has not been commenced in the proper court may, on the court's own motion, be transferred to the proper court. Therefore, this action will be transferred to the Sacramento Division. This Court will vacate its Findings and Recommendations issued April 22, 2024, to permit the proper court to consider Plaintiff's request to proceed *in forma pauperis*.

Plaintiff's request to dismiss filed May 6, 2024, will be denied without prejudice. Should Plaintiff wish to dismiss the action following transfer to the Sacramento Division, he may submit a notice pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, to that court.

III.   CONCLUSION AND ORDER

Based on the foregoing and for good cause appearing, **IT IS HEREBY ORDERED** that:

1.   The Findings and Recommendations issued April 22, 2024 (Doc. 7) are **VACATED**;

2.   Plaintiff's request to dismiss (Doc. 8) is **DENIED** without prejudice;

---

[1] Plaintiff is presently housed at California State Prison-Corcoran.

2

3.   This action is transferred to the United States District Court for the Eastern District of California sitting in Sacramento;

4.   All future filings shall refer to the new Sacramento case number assigned and shall be filed at:

United States District Court
Eastern District of California
501 "I" Street, Suite 4-200
Sacramento, CA 95814

5. The Sacramento Division shall rule on Plaintiff's request to proceed *in forma pauperis*.

IT IS SO ORDERED.

Dated: **May 13, 2024**   /s/ *Sheila K. Oberto*
                                                    UNITED STATES MAGISTRATE JUDGE

3